

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Joshua Manning

v.

Civil No. 05-cv-369-SM

Larry Blaisdell, Warden,
Northern New Hampshire
Correctional Facility

REPORT AND RECOMMENDATION

Joshua Manning filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on October 19, 2005 setting forth two claims for relief, one alleging a violation of Manning's Fourth Amendment rights and one alleging an illegal consecutive sentence. On October 25, 2005, I recommended that the Fourth Amendment claim be dismissed (document no. 4). That recommendation was approved by the Chief Judge on November 14, 2005 (document no. 8). On October 25, 2005, I also issued an Order directing Manning to amend his consecutive sentence claim to demonstrate that the claim was exhausted in the state courts (document no. 5). With respect to the consecutive sentence claim, Manning was specifically instructed to:

[F]ile documentation demonstrating that this issue,
including the provision of the United States

constitution or federal law that he claims was violated, was raised in the state courts and ultimately presented to the [New Hampshire Supreme Court] for consideration. This documentation includes any pleadings, briefs, notice of appeal or other documents filed in the state trial and appellate courts relative to this claim and any orders issued in the state courts relative to this claim.

See Order, Oct. 25, 2005 at *7 (emphasis added).

Manning has now filed an amended complaint, attaching both the notice of appeal and brief previously filed in the New Hampshire Supreme Court regarding the sentencing issue (document no. 11). Manning's documents demonstrate that the issue of illegal sentencing was raised in the New Hampshire Supreme Court. It is apparent from a review of the amended complaint and its attachments, however, that no claim of a violation of a federal constitutional or statutory right was presented to that court for consideration. Accordingly, I find that Manning's sentencing claim has not been exhausted in the state courts and I recommend that the petition be dismissed. See Lanigan v. Maloney, 853 F.2d 40, 42 (1st Cir. 1988), cert. denied, Maloney v. Lanigan, 488 U.S. 1007 (1989) ("habeas corpus petitioner must have presented the substance of his federal constitutional claim to the state appellate courts so that the state had the first chance to

correct the claimed constitutional error"); see also Picard v. Connor, 404 U.S. 270, 275 (1971) (requiring petitioner to have fairly presented the federal nature of his claims to the state courts to give them the first opportunity to remedy the claimed constitutional error).

Any objections to this Report and Recommendation must be filed within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See Unauthorized Practice of Law Comm. v. Gordon, 979 F.2d 11, 13-14 (1st Cir. 1992); United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986).


James R. Muirhead
United States Magistrate Judge

Date: January 31, 2006

cc: Sven D. Wiberg, Esq.